

Pradeep Kumar Srivastava and Ors Vs. Personnel and Adminis Reform

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Court : Jharkhand

Decided On : Jul-29-2016

Appellant : Pradeep Kumar Srivastava and Ors

Respondent : Personnel and Adminis Reform

Judgement :

1 W. P. (S) No. 6263 of 2014 (In the matter of an application under Article 226 of the Constitution of India) ----- 1. Pradeep Kumar Srivastava, S/o Late Badri Narayan Srivastava, at present Principal District & Sessions Judge, Civil Court, Chaibasa.

2. Om Prakash Pandey, S/o Late Adya Shankar Pandey, at present Principal District & Sessions Judge, Civil Court, Sahebganj.

3. Vishnu Kant Sahay, S/o Late Bishwambhar Lal, at present Principal District & Sessions Judge, Civil Court, Lohardaga 4. Sandeep Srivastava, S/o Late Rameshwar Prasad Srivastava, at present Senior Law Advisor-cum-Additional Secretary, JSEB, Ranchi 5. Rajendra Kumar Jumnani, S/o Late Vishan Das, at present Presiding Officer, Labour Court, Dhanbad.

6. Ambuj Nath, S/o Late Kameshwar Prasad, at present Principal District & Sessions Judge, Civil Court, Dhanbad 7. K.K. Srivastava, S/o Late H.N. Prasad Srivastava, at present Principal District & Sessions Judge, Civil Court, Palamau 8. Navneet Kumar, S/o Sri Hirdaya Narayan, at present Principal District & Sessions

Judge, Civil Court, Garhwa.

9. B.K. Goswami, S/o Late Brajendra Sharan Goswami, at present Principal District & Sessions Judge, Civil Court, Gumla.

10. Sanjay Prasad, S/o Late Harendra Prasad, at present Chairman, Commercial Taxes Tribunal, Ranchi.

11. Manoranjan Kavi, S/o Late Shyama Pada Kavi, at present Principal District & Sessions Judge, Civil Court, Jamtara. Petitioners Versus 1. The State of Jharkhand 2. The Principal Secretary, Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, Ranchi 3. The Principal Secretary, Department of Finance, Government of Jharkhand, Ranchi 4. The Joint Secretary, Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, Ranchi.

5. Hon'ble Jharkhand High Court through Registrar General, Jharkhand High Court, Ranchi Respondents ----- For the Petitioners : Mr. Rajendra Krishna, Rishi Pallava, Advocates For the State : Mr. Rajesh Kumar, G.P.-V For the High Court : Mrs. A. R. Choudhary, Advocate ----- PRESENT HONBLE MR. JUSTICE PRADIP KUMAR MOHANTY HONBLE MR. JUSTICE D. N. UPADHYAY By Court: Heard Mr. Rajendra Krishna, learned counsel appearing for the petitioners, Mr. Rajesh Kumar, learned G.P.-V appearing for the State, and Mrs. A. R. Choudhary,, learned counsel appearing for the 2 High Court.

2. This writ petition is directed against Resolution dated 27.11.2013 contained in Memo No. 6/Stha.Vividh-009-08/2004 Ka.- 11415/ Ranchi (Annexure-6) issued under signature of respondent no 4, whereby the State Government has re-apportioned the post of District Judges in Super Time Scale i.e @ 10% of the Selection Grade in place of 10% of Cadre Strength under Revised Assured Career Progression (for short ACP) Scheme. The petitioners have also prayed for quashing of Resolution dated 29.6.2010, contained in Memo No. 1990/vi. (Annexure-7), issued under signature of respondent no 3, whereby it has been mentioned against Sl. No. 6 under heading of A.C.P. that District Judge Super Time Scale shall continue on merit-cum-seniority to the available 10% of the

Selection Grade to those officers, who have rendered not less than three years of continuous service as Selection Grade District Judges. The petitioners have further prayed for directing the respondents to consider the Hon'ble Justice E. Padmanabhan (Retd.) Commission's Report and Hon'ble Justice K. Jagannatha Shetty Commission's Recommendations (First National Judicial Pay Commission) in its letter and spirit, particularly taking into consideration Corrigendum-II dated 24.4.2002 of Shetty Commission's Report and further to issue fresh resolution modifying Resolution dated 29.6.2010 and Resolution dated 27.11.2013 to the extent that re- apportionment of the posts of District Judges in Super Time Scale be made @ 10% of the Cadre Strength in place of 10% of Selection Grade. The petitioners have also prayed for a direction upon the respondents to consider the case of the petitioners for granting them Super Time Scale under District Judge Cadre after issuance of fresh resolution modifying Resolution dated 29.6.2010 and Resolution dated 27.11.2013 to the extent that re-apportionment of the post of District Judges in Super Time Scale be made @ 10% of the Cadre Strength in place of 3 10% of Selection Grade.

3. The facts of the case are that the petitioners are the officers of Superior Judicial Services, Jharkhand in the name of Principal District Judges. Pursuant to the direction of the Hon'ble Apex Court passed in a writ petition being W.P. (C) No. 1022 of 1989 on 21.3.1996, the First National Judicial Pay Commission was constituted, which recommended that the minimum 10% of Cadre Strength in District Judges be given Super Time Scale to those, who have put in minimum number of three years in the cadre of Selection Grade. Further, vide Corrigendum-II dated 24.4.2002 some correction was made to the extent that

10. of the Selection Grade District Judges would be given to those who have put in not less than three years of continuous service as Selection Grade District Judges should be read as

10. of the Cadre Strength District Judges and would be given to those who have put in not less than three years of continuous service as Selection Grade District Judges. Thereafter, the State Government issued resolution pertaining to revision of pay scale of the Judicial Officers in the State of Jharkhand vide Memo No.

1174/vi. Ranchi dated 7.5.2003 with effect from 01.01.1996 but in the resolution, the post of Selection Grade and Super Time Scale was not mentioned. The State Government issued Resolution dated 27.4.2006 contained in Memo No. 2019/Ranchi whereby out of 142 posts, 25% i.e. 35 posts for Selection Grade of District Judge and 10% i.e. 14 post for Super Time Scale have been apportioned. The Hon'ble Supreme Court had directed all the State Governments to implement the recommendation of Justice Padmanabhan Commission with effect from 01.01.2006 and therefore, the Department of Finance, Government of Jharkhand came with Resolution dated 29.6.2010 contained in Memo No. 1990/vi. wherein it has been mentioned that against Serial No. 6 under the heading of ACP Scheme the District Judge Super Time Scale shall be continued on 4 merit-cum-seniority to available 10% of the Selection Grade to those officers who have put in not less than three years of continuous service as Selection Grade District Judge. But on 7.3.2012 re-apportionment was done on the basis of increased Cadre Strength of 151 posts as 38 posts and 15 posts respectively, adopting the same formula i.e. 25% of the Cadre strength in Selection Grade and 10% of the Cadre strength in the Super Time Scale. Viz. 25% of 151 = 38 posts in Selection Grade and 10% of 151 = 15 in Super Time Scale. On account of increase in the Cadre Strength of District Judge upto 178 post, a recommendation was made for re-apportionment of the Selection Grade and Super Time Scale of District Judge and the State Government vide Resolution dated 27.11.2013 contained in Memo No. 6/Stha./Vividh-009-08/2004 Ka.- 11415/Ranchi, re-apportioned the posts of District Judge in Super Time Scale @ 10% of the Selection Grade in place of 10% of Cadre Strength under Revised A.C.P. Scheme. The petitioners filed an interlocutory application bearing I.A. No. 317 in W.P.(C) No. 1022 of 1989 before the Hon'ble Apex Court for clarification/modification which was disposed of, as withdrawn with liberty to approach the High Court for appropriate relief vide order dated 28.1.2014. Thereafter on 21.2.2014, a letter was issued by this Court to the State Government wherein it recommended to withdraw the unilateral decision taken vide resolution dated 27.11.2013. Reminders were also issued by this Court but to no effect and hence, the petitioners left no option but to file the instant writ petition, challenging the said order.

4. Three counter affidavits have been filed; first by the Principal Secretary, Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, Ranchi through Under Secretary on 28.1.2015; second by the Principal Secretary, Department of Planning-cum-Finance, Government of Jharkhand, Ranchi through Under Secretary on 16.2.2016; and third by the Registrar General, 5 Jharkhand High Court, Ranchi on 23.2.2015.

5. Paragraph-7 of the counter affidavit filed by the Principal Secretary, Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, Ranchi on 28.1.2015, reads as under:-

7. That the Hon'ble Supreme Court by its order dated 28.4.2009 passed in W.P.(C) No. 1022 of 1989 (All India Judges Association and Ors Vs. Union of India & Ors) appointed Justice E. Padmanabhan (Retd.) Commission to determine the pay scales of the judicial officers working and retired, throughout the country. Justice E. Padmanabhan Commission submitted its report on 17.7.2009 and the Hon'ble Supreme Court by its orders dated 7.4.2010 and 4.5.2010 in the aforesaid case, directed all the State Governments to implement Justice E. Padmanabhan Commission recommendation from 01.01.2006.

6. Paragraphs-7 and 8 of the counter affidavit filed by the Principal Secretary, Planning-cum-Finance Department, Government of Jharkhand, Ranchi on 16.2.2016, read as under:-

7. That it is humbly stated that the issue herein had fell for consideration before the Hon'ble Supreme Court in Writ Petition (C) No. 1022 of 1989 (All India Judges Association and Ors Vs. Union of India & Ors) and the Hon'ble Supreme Court vide its order dated 4.5.2010 directed all the State Governments to implement Justice E. Padmanabhan Committee recommendation with effect from 01.01.2006 in order to maintain uniformity in pay scales of the judicial officers all over the country.

8. That the Hon'ble Supreme Court taking note of the fact that the State of Andhra Pradesh had already issued a notification accepting the recommendation of the Padmanabhan Committee made it a part of its order so that the same could be

followed by other States also.

7. Paragraphs-11 to 16 of the counter affidavit filed by the Jharkhand High Court, Ranchi through Registrar General on 20.2.2015, 6 read as under:-

11. That it is stated and submitted that accordingly, the State Government, by its Memo No. 2273 dated 7.3.2012 re- apportioned the posts of Selection Grade Scale and Super Time Scale in the following manner:- a. 38 posts in Selection Grade Scale @ 25% of 151 posts of the cadre strength of Jharkhand Superior Judicial Service. b. 15 posts in Super Time Scale @ 10% of 151 posts of the cadre strength of Jharkhand Superior Judicial Service.

12. That it is stated and submitted that in the light of further increase in the cadre strength of Superior Judicial Service upto 178 (excluding the 13 posts created for specific period), a recommendation was again sent by this Court to the Principal Secretary to the Government, Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, by this court's letter bearing no. 2764/Apptt. dated 22.3.2013 for appointment of the posts of Selection Grade Scale and Super Time Scale in the manner as mentioned below:-

Name of the post	Number of posts to be apportioned	date of effect
Selection Grade (25%)		
1. 39	w.e.f. 06.11.2010	
2. 40	w.e.f. 15.12.2011	
3. 45	w.e.f. 16.02.2013	
Super Time Scale (10%)		
1. 16	w.e.f. 06.11.2010	
2. 18	w.e.f. 16.2.2013	

13. That it is stated and submitted further that in lieu of increasing the posts of Super Time Scale/Selection Grade Scale the State Government through impugned Memo No. 6/Stha/Vividh-009-08/2004 Ka-11415/Ranchi dated 27.11.2013 of the Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, Ranchi has amended all the resolutions issued earlier in this regard and has radically decreased the posts of Super Time Scale from proposed 18 posts to 05 posts.

14. That it is stated and submitted further that therefore, on the receipt of the resolution dated 27.11.2013 of the State Government, the matter was considered by this Court and thereupon it was resolved to raise objection in the matter and request, the State Government to withdraw the same 7 forthwith.

15. That it is stated and submitted further that accordingly, a letter bearing no. 2369/Apptt. dated 21.2.2014 was sent to the State Government whereby- (a) an objection was raised by this Court on the unilateral decision of the State Government to reduce the strength of the District Judges to be promoted in the Super Time Scale from 10% of the total cadre strength to 10% of the Selection Grade posts of District Judges. (b) the State Government was informed that - Articles 233 and 235 of the Constitution of India vest in the High Court to exercise control over the district courts and courts subordinate thereto. Appointment as well as promotion of the District Judges shall be made by the Government in consultation with the High Court. (c) the State Government has been requested to issue necessary resolution withdrawing the aforesaid Resolution No. 11415/Ranchi dated 27.11.2013 accordingly.

16. That it is stated and submitted further that since nothing has been communicated from the end of the State Government, two reminder letters bearing no. 5406/Apptt. dated 8.5.2014 and 13277/Apptt. dated 11.12.2014 has also been sent to the State Government in continuation of this Court's letter bearing no. 2369/Apptt. dated 21.2.2014.

8. Mr. Rajendra Krishna, learned counsel appearing for the petitioners, has submitted that since the Personnel Administrative Reforms and Rajbhasa Department, Government of Jharkhand, Ranchi has taken Resolution dated 27.4.2006 contained in Memo No. 2019/Ranchi (Annexure-3) and Resolution dated 7.3.2012 contained in Memo No. 2273 (Annexure-4), they were under the obligation to accept the recommendation made by the High Court vide letter dated 22.3.2013 and should have accordingly taken the resolution and re- apportioned the posts of Selection Grade and Super Time Scale as per the existing Cadre Strength of District Judges. The resolution dated 27.11.2013, issued by the Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand, Ranchi, has not been issued in consultation with the High Court as required under Articles 233 and 235 of the Constitution of India. The resolution so taken is liable to be quashed. It is further submitted that the counter affidavits, filed on behalf of respondent nos. 2 and 3, are not as per the rules of executive business, as they are not competent to file affidavits on behalf of the Principal

Secretary, Department of Personnel Administrative Reforms and Rajbhasa, Ranchi and the Principal Secretary, Department of Planning-cum-Finance, Ranchi. Learned counsel further submitted that in view of the direction of Padmanabhan Commission, resolution, contained in Annexure-6 issued by the State Government, is in violation of Articles 233 and 235 of the Constitution of India, and hence the orders impugned passed by the State Government are fit to be set aside. It is painful that even after issuance of repeated reminders by the High Court, the Government of Jharkhand has not withdrawn its resolution dated 27.11.2013 and sat tight over the matter.

9. Mr. Rajesh Kumar, learned G.P.-V, appearing for the respondents-State, submitted that the State authorities have acted as per the direction of the Honble Apex Court vide order dated 4.5.2010, as attached, passed in W.P. (C) No. 1022 of 1989 and hence, there being no illegality and infirmity, the orders impugned do not warrant interference by this Court.

10. Mrs. A.R. Choudhary, learned counsel appearing for the High Court, has supported the case of the petitioners and submitted that the resolution, issued by the Finance Department on 29.6.2010 (Annexure-7), is contrary to law.

11. The aim and object of Shetty Commission was never modified by any other Commission or by the Honble Apex Court. Paragraphs- 10.117 and 10.118 of Shetty Commission Report are quoted herein- under:- 9 10.117. The Commission recommends minimum 25 per cent of the posts in the cadre of District Judges in every State/UT shall carry Selection Grade. This may be given on the basis of merit-cum-seniority to those who have put in minimum experience of 5 years in the cadre. 10.118. The Commission further recommends that minimum 10% of cadre strength in District Judges be given Super Time Scale to those who have put in minimum number of 3 years in the cadre of Selection Grade.

12. Perused the entire records and judgments of the High Court and the Honble Supreme Court passed in W.P.(C) No. 1022 of 1989 (All India Judges Association and Ors Vs. Union of India & Ors). We have also gone through the provisions contained in Articles 233 and 235 of the Constitution of India and found the following admitted facts:- i. All the petitioners are the Superior Judicial Officers and

they are entitled to the Cadre Strength. ii. As per resolution dated 27.4.2006 (Annexure-3) taken by the Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, Ranchi has accepted the recommendation of Shetty Commission and as per the resolution dated 7.3.2012, 10% of the Cadre Strength of District Judges, who shall complete continuously three years of satisfactory service in the cadre of Selection Grade, shall be given Super Time Scale. iii. Thereafter vide Letter No. 2764/Apptt. dated 22.3.2013 the High Court has recommended for increase of posts of Selection Grade and Super Time Scale in view of increase in Strength of Cadre of District Judges. iv. Even after issuance of Resolution dated 29.6.2010 (Annexure-7) issued by the Finance Department, Government of Jharkhand, Ranchi, the Personnel, 10 Administrative Reforms and Rajbhasa Department following the earlier resolution dated 27.4.2006 again resolved in the same line on 7.3.2012 (Annexure-4). v. In view of the increase in the strength of Cadre of District Judges, Letter No. 2764/Apptt. Dated 22.3.2013 was issued by the High Court with a recommendation to re-apportion the number of Selection Grade and Super Time Scale as per the Cadre Strength i.e. 25% to the Selection Grade of the Cadre Strength 10% of the Cadre Strength to Super Time Scale. vi. Instead of accepting the recommendation of the High Court, resolution dated 27.11.2013 (Annexure-6) was taken by the Personnel, Administrative Reforms and Rajbhasa Department.

13. Before issuance of the resolution and letter, under-challenge, the State Government had considered all promotion matters as per Annexures-3 and 4. On scanning of the documents, it is crystal clear that even after issuance of letters dated 21.2.2014 and reminders dated 8.5.2014 and 11.12.2014 by the Registrar General, Jharkhand High Court, no consultation was ever made to meet out the provisions of Articles 233 and 235 of the Constitution of India. Articles 233 and 235 of the Constitution of India are quoted hereinunder:-

233. Appointment of district judges.--(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not

less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

235. Control over subordinate Courts.--The control over 11 district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law. From bare reading of Articles 233 and 235 of the Constitution of India, it is crystal clear that any posting, promotion and grant leave etc. are in the domain of the High Court. Though the letter was issued by the High Court vide Annexure-10 but no step was ever taken by the State Government. Even reminders were issued to the Government on 8.5.2014 and 11.12.2014, but the State Government instead of responding those letters remained silent. The modified resolution dated 27.11.2013 (Annexure-6) has been issued without consulting the High Court. It is apparent that in the light of the order dated 7.4.2010 passed by the Hon'ble Supreme Court in the case of All India Judges Association and others Vs. Union of India & others {(2010) 14 SCC730}, the letter and resolution, issued by the State Government, are not in the letter and spirit of the order dated 7.4.2010.

14. Further, as per the judgment rendered by the Hon'ble Supreme Court in the case of The State of Assam Vs. Ranga Muhammad and others (AIR1967 Supreme Court 903), it is mandate on the part of the State Government to consult the High Court but the State Government has not even taken into account the view taken by the Constitutional Bench of the Hon'ble Supreme Court.

15. Coupled with this fact, the Principal Secretary of the Finance Department was not competent to file the counter affidavit through Under Secretary, since the matter relates to promotion of the judicial 12 officers. The aforesaid facts and circumstances were never considered by the State Government particularly the Principal Secretary, Personnel, Administrative Reforms and Rajbhasa Department

who has filed counter affidavit in the present writ petition.

16. Accordingly, the Resolution dated 27.11.2013, contained in Memo No. 6/Stha. Vividh-009-08/2004 Ka-11415/Ranchi, and Resolution dated 29.6.2010, contained in Memo No. 1990/vi, are hereby quashed. The matter is remitted back to the State Government for passing necessary order within two months with due consultation of this Court.

17. Thus, writ application is allowed. However, no costs. (Pradip Kumar Mohanty, J.) (D. N. Upadhyay, J.) Jharkhand High Court, Ranchi Dated the 29th July, 2016
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